IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10079 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJESH MOHANDAS DHANWANI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10079 of 2001

MR AR SHAIKH for Petitioner No. 1

MR S.S. PATEL, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 17/01/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 16.7.2001 passed by the Commissioner of Police, Surat City in exercise of power under Section 3

of the PASA Act. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a dangerous person. The detaining authority has considered four registered offences against the detenu, besides two statements of anonymous witnesses recorded on 26th May, 2001 and 27th May, 2001, which have been verified on 25th June, 2001.

3. The order is assailed only on the ground of delay resulting into improper exercise of powers under Sec. 3 of the PASA Act. It is contended that statements were verified on 25th June, 2001, whereas the order was passed on 16th July, 2001 i.e. after 21 days. It is also contended that there is delay in respect of the registered offences as well, as the last offence is dated 14th March, 2001. It is contended that if the need for immediate exercise of powers under Sec. 3 was genuine, the order would have been passed earlier. Under the circumstances, the order passed is not on basis of a genuine satisfaction and the petition therefore may be allowed.

4. Learned AGP Mr. S.S. Patel has opposed this petition.

5. It is clear from the documents supplied with the grounds of detention that the statements of anonymous witnesses were recorded on 26th May, 2001 and 27th May, 2001 and the statements were verified on 25.6.2001. The order was passed on 16.7.2001. Thus, the order suffers from the vice of delay apparently. If the satisfaction of the detaining authority for the immediate need for detaining the petitioner and for the need for exercise of powers under Section 3 of the PASA Act was genuine, the order would have been passed immediately after verifying, but instead the order is passed after 20 - 21 days. Thus, the satisfaction for the need for exercise of powers under Section 3 of the PASA Act gets vitiated. Consequently, the detention order and detention itself would be vitiated. The petition therefore deserves to be allowed on this ground.

6. The petition is therefore, allowed. Order of detention dated 16th July, 2001 passed by the Commissioner of Police, Surat is quashed and set aside. Detenu Rajesh Mohandas Dhanwani be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas